Filed 8/23/19 Sexton v. Valois CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JILLIAN SEXTON, Plaintiff and Respondent, v. MICHAEL VALOIS, Defendant and Appellant.	D074800 (Super. Ct. No. 37-2018-00025419-CU-HR-SC)

APPEAL from an order of the Superior Court of San Diego County, Dwayne K. Moring, Judge. Affirmed.

Michael Valois, in pro. per., for Defendant and Appellant.

Law Offices of David C. Beavans and John T. Sylvester for Plaintiff and Respondent.

I

INTRODUCTION

Michael Valois appeals a civil harassment restraining order prohibiting him from harassing or contacting a former high school classmate pursuant to Code of Civil

Procedure section 527.6. He contends substantial evidence did not support the issuance of the restraining order. However, Valois has failed to provide a sufficient record to support his arguments on appeal, such as a reporter's transcript of the restraining order hearing. Therefore, we presume the evidence presented at the hearing supported the issuance of the restraining order, and affirm.

II

BACKGROUND

Sexton filed a request for a civil harassment restraining order against Valois, a high school acquaintance with whom she had a platonic relationship. She alleged Valois sent her approximately 100 text messages over a four-month span, including messages in which he threatened her, indicated he may kill her, and professed his love to her. She alleged she blocked Valois from messaging her, but he thereafter sent text messages to her friends stating he "wanted to acquire hair, skin, and blood samples" from her and wanted to build a robot version of her to love him and call him "father." She further alleged he sent text messages to her friends indicating he needed "illegal help with something" and wanted to "hack a love interests [*sic*] everything." Additionally, she alleged he once stalked her by appearing at her college professor's office hours while she was present. Based on these allegations, the trial court issued a temporary restraining order prohibiting Valois from harassing or contacting Sexton.

Valois filed a response to the request for a civil harassment restraining order. He did not check the box on the applicable Judicial Council of California (JCC) form indicating he was eligible for a fee waiver or the box indicating he denied the allegations

in the request. However, he attached a declaration responding to the request. He disputed he had stalked Sexton and contended the encounter at her college professor's office hours was a mere coincidence. He did not dispute that he sent most of the text messages described in the request, but emphasized that he sent the majority of them to third parties and not Sexton. He also defended the text messages on grounds they were "likely spoken in metaphor with artistic language." Despite disagreeing with the basis of the request for a restraining order, Valois offered to undergo drug testing and a psychiatric evaluation, and asked the court to "levy upon [him] a restraining order for the maximum time permitted by law" to assuage Sexton's concerns. At the close of his declaration, he averred as follows: "Though I disagree with the pretext and purpose of these proceedings entirely, I offer my signature in acquiescence to [Sexton's] demand and I defer to the better judgment of the Superior Court of California. [¶] She is more important."

The trial court conducted a hearing during which Sexton and Valois testified. There is no indication in the record either party requested an official court reporter and the court's minute order indicates no record of the hearing was made. Following the hearing, the court issued a restraining order prohibiting Valois from harassing or contacting Sexton for a period of three years.

III

DISCUSSION

Code of Civil Procedure section 527.6 was enacted " 'to protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California

Constitution.' [Citations.] It does so by providing expedited injunctive relief to victims of harassment." (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412.) A person who has suffered harassment may seek an order after hearing prohibiting harassment as provided in section 527.6. (Code Civ. Proc., § 527.6, subd. (a)(1).) "Harassment" is defined as "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." (*Id*., subd. (b)(3).) The trial court may issue an injunction under Code of Civil Procedure section 527.6 based on "clear and convincing evidence that unlawful harassment exists." (*Id.*, subd. (i).)

Valois challenges the restraining order on grounds it was not supported by substantial evidence. He claims substantial evidence did not establish that he engaged in harassment or that there existed a threat of future harm necessitating injunctive relief. Sexton asserts three arguments in response, claiming we must affirm the restraining order because: (1) Valois has failed to provide an adequate record of the trial court proceedings to enable us to engage in meaningful appellate review; (2) Valois waived his right to appeal the restraining order by expressly agreeing to its issuance; and (3) substantial evidence supported the restraining order. We agree with Sexton's first claim and therefore resolve this appeal in her favor without addressing her remaining contentions.

"[I]t is a fundamental principle of appellate procedure that a trial court [order] is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error

that justifies reversal …. 'In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. "[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented." ' [Citation.] ' "A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." ' [Citation.] 'Consequently, [the appellant] has the burden of providing an adequate record.' " (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–609 (*Jameson*).) "A proper record includes a reporter's transcript or a settled statement of any hearing leading to the order being challenged on appeal." (*Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 574.)

Valois's sole contention on appeal is that the evidence presented to the trial court was insufficient to support the issuance of the restraining order. However, Valois has not provided this court a reporter's transcript of the hearing during which the trial court received evidence pertaining to the necessity of the restraining order and, presumably, during which it discussed its rationale for issuing the restraining order.[1] Because Valois has not provided us a reporter's transcript or suitable substitute, we must presume the evidence supported the issuance of the restraining order and, therefore, affirm the

---

1 As noted *ante*, the record indicates neither party requested an official court reporter for the restraining order hearing. The record also indicates Valois did not check the box of the applicable JCC form indicating he was eligible for a fee waiver, which may otherwise have entitled him to a free reporter's transcript as an in forma pauperis litigant. (*Jameson*, *supra*, 5 Cal.5th at p. 599.)

restraining order. (See, e.g., *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 [rejecting argument regarding necessity for injunction because appellant failed to include reporter's transcript of trial court proceedings]; *Parker v. Harbert* (2012) 212 Cal.App.4th 1172, 1178 [rejecting sufficiency of the evidence challenge to sanctions order based on appellant's failure to provide reporter's transcript].)

IV

DISPOSITION

The order is affirmed.

McCONNELL, P.J.

WE CONCUR:

O'ROURKE, J.

DATO, J.